



September 11, 2000

Ms. Bertha Bailey Whatley  
Offices of Legal Service  
Fort Worth Independent School District  
100 North University Drive, Suite NW 130  
Fort Worth, Texas 76107

OR2000-3469

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138984.

The Fort Worth Independent School District (the "district") received the following request: "copies of meeting of the FWISD Board of Education of 6/27/00 including any and every respect of Pastor Mark Kirkland of "Movement of Equality." You state that the requested information that pertains to the open session of the board meeting will be released to the requestor. You assert that the transcript from the closed session is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" (emphasis added). Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). You state that the closed session pertained to a complaint against two administrators and that one of the administrators requested that the complaint be heard in closed session pursuant to section 551.074 of the Government Code. Gov't Code § 551.074 (providing that complaint against employee may

be held in closed session).<sup>1</sup> Therefore, the district must withhold the transcript of the tape recording of the closed session pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

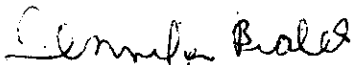
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<sup>1</sup>The Open Meetings Act does not permit the Office of the Attorney General to review the confidential agendas and tapes. See Open Records Decision No. 495 (1988).

complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 138984

Encl: Submitted documents

cc: Ms. Della Brooks  
1040 East Mulkey Street  
Fort Worth, Texas 76104  
(w/o enclosures)